

**Central Administrative Tribunal, Lucknow Bench, Lucknow**

**Original Application No.181/2005**

This the 1<sup>st</sup> day of August, 2012

**Hon'ble Sri S.P.Singh, Member (A)**

**Hon'ble Sri Navneet Kumar Member (J)**

Zulfiqar Ahmad aged about 49 years son of Sri Absar Ahmad r/o  
H.No. 426/779, Wazirbagh, Lucknow.

Applicant

By Advocate: Sri Ravindra Sharma

**Versus**

1. Union of India through the General Manager (Personnel), North Eastern Railway, Gorakhpur.
2. The Chief Administrative Officer (Construction)l, North Eastern Railway, Gorakhpur.
3. The Chief Signal and Telecom Engineer (Const.) NE Railway, Gorakhpur.
4. The Dy. Chief Signal and Telecom Engineer (Const.), North Eastern Railway, Lucknow.
5. The District Signal and Telecom Engineer (Const.), North Eastern Railway, Lucknow Division, Lucknow.

Opposite Parties

By advocate: Sri S.Verma

(Reserved on 30.7.2012)

**ORDER**

**BY HON'BLE SHRI NAVNEET KUMAR MEMBER (J)**

The present O.A. has been preferred by the applicant u/s  
19 of the AT Act, for the following reliefs:-


- a) This Hon'ble Tribunal may very graciously be pleased to set aside the impugned order dated 29-11/1-12/2004 (as contained in Annexure No.1 to the O.A. ) as arbitrary, illegal and violative of the service rules besides infringement of the fundamental rights of the applicant as enshrined in Article 14 and 16 of the Constitution.
- b) This Hon'ble Tribunal may kindly be pleased to direct the respondents to fix the pay of the applicant in Group C post (LDC) with retrospective effect from the

year 1983 or at least with effect from 1.1.1995, when the applicant had duly taken part in the written examination (which he passed as was subsequently declared by the respondents - although about 8 years later) or with effect from the date his said juniors were granted the pay scale admissible to the post of LDC along with arrears, all consequential benefits, seniority over and above the said juniors, increments, promotion etc.

- c) Any other order or direction that this Hon'ble Tribunal may deem fit, just and proper in the circumstances of the case may also be passed, favouring the applicant.
- d) Allow the present application in toto with costs.

2. The facts of the case are that the applicant was initially appointed as Khalasi in the Lucknow Division of North Eastern Railway. Subsequently was given promotion as Material Chaser. In 1983, a selection was held for three posts of LDC (Group 'C') against the 40% reserved seats for construction division. The applicant appeared in the written test and was declared successful but subsequently he failed in viva voce test. Feeling aggrieved, the applicant filed Writ Petition No. 6793/83 before the Hon'ble High Court against the selection which was subsequently transferred to this Tribunal and registered as Transfer Application (TA) No. 1228/87. The Tribunal vide its order dated 15.7.92 disposed of the TA and allowed the same in part. As regard the cancellation order of the selection of applicant No.1 it was observed that he will be deemed to be duly appointed as Junior Clerk in the grade of Rs. 260-400 from the date, he was selected and joined the post. As regard applicants No. 2 and 3 of TA No. 1228 of 1987 is concerned, they were not found eligible for selection but on the basis of interim order,

they continued to hold the said post. Accordingly, their regularization for the said post shall be considered by the respondents first and in case, their regularization will not be possible, only then selection for the said two posts may be held. As such, the applicant was again reverted back as Khalasi. After the said reversion, fresh selection was taken place and written examination was held for the post of LDC. On account of large number of irregularities, the selection so taken place was also cancelled and fresh notification was issued and the applicant again participated in the written test held for the post of LDC. Two other employees, namely Jagbir Singh Verma and Sri Laxmi Narain challenged the said selection by means of filing O.A. No. 9 of 1995 before this Tribunal and this Tribunal while deciding the O.A. No. 9 of 1995 on 7-11-2001, observed that there is no merit in the O.A. Accordingly, the same was dismissed. It is also pointed out that the applicant has also filed an O.A. No. 513/1995 before this Tribunal which was decided on 5.9.2002, disposing of the same with the direction that the respondents shall complete the selection process by holding a viva voce test in pursuance of the written test held on 15.11.1994 within a period of three months from the date of receipt of this order. After the said direction, the applicant was declared successful in the written test and was regularized on the post of LDC. The applicant subsequently submitted number of representations to the respondents seeking correction of fixation of pay with retrospective effect from the year 1983. The respondent No.4, rejected the representation of the applicant vide order dated 29-11/1-12-2004, wherein the claim of the applicant was rejected mentioning this fact that any selection is finalized only after the approval of the panel and the concerned employee is being given benefit only when he joins the



respective post. Feeling aggrieved of the said decision of respondent No.4, the applicant once again submitted appeal to the respondent No.3 on 7.1.2005 and the same is still pending as such the applicant has preferred the present O.A. for claiming the correct fixation of pay with retrospective effect from the year 1983.

3. The learned counsel appearing on behalf of the respondents filed their counter affidavit. By means of counter affidavit, the respondents have taken a ground that the challenge of the applicant claiming correction of fixation of pay w.e.f. 1983 is highly time barred. The respondents also pointed out that seeking fixation of his pay w.e.f.1.1.95 or from the date when his juniors were granted the benefit of higher emoluments/pay admissible to the post of LDC despite the fact that they are holding the said post on adhoc basis is not illegally, unjustifiable and arbitrarily. It is also pointed out that any selection is complete only when a select panel is declared after approval from the competent authority and not from any date prior to it. It is also pointed out by the respondents that seniority of any incumbents declared selected and empanelled in the select panel is reckoned from the date of their joining the working post and not otherwise. Accordingly, the benefit of the pay scale admissible for the post of LDC and pay fixation in the said post to the applicant can only be given from the date he joined the post of LDC and not otherwise. It is also pointed out that delay in completion of selection to the post of LDC was only on account of pending litigation before the Hon'ble Tribunal and rejection of the applicant's representation is fully justified and in accordance with the relevant rules. Apart from this, the respondents have also pointed out that the applicant has not indicated any person who is junior to him and whose pay


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is higher than him, nor he has arrayed any one of them as respondents in the instant O.A. , as such the present O.A. is liable to be dismissed on the ground of non-joinder of parties. The respondents have also pointed out that the applicant is comparing himself with two persons namely Jagbir Singh Verma and Laxmi Narain, who got qualified the selection for Group 'C' post of Junior Clerk against 40% construction reserve quota in the year 1983, while the applicant had failed therein. The respondents vehemently argued and opposed the averments made in O.A. on the ground that the present O.A. is barred by limitation and also submitted that the same is liable to be rejected on the ground of non-joiner of parties.

4. The learned counsel appearing on behalf of the applicant filed Rejoinder Reply and through Rejoinder Reply, the applicant once again reiterated the averments made in the Original Application.

5. Heard the learned counsel for the parties and perused the material on record.

6. The brief undisputed facts of the case are that the applicant who joined the Railway Administration was given initial appointment as Khalasi and was promoted as Material Chaser. In 1983, a selection was held for 3 Group 'C' posts against 40% reserved quota for construction Division. The applicant appeared in the said selection but after being declared successful in the written test failed in the viva voce. The applicant compares himself with two successful candidates namely Jagbir Singh Verma and Sri Laxmi Narain who had qualified the selection for Group 'C'; post of Junior Clerk against 40 % reserved quota for construction Division way back in 1983 while the applicant had failed therein. It is also to be pointed out that the applicant appeared in the selection



declared successful in the written test but since he was not declared successful after the viva voce as such, the relief for stepping of applicant's pay at par with Sri Jagbir Singh Verma and Sri Laxmi Narain or any other junior w.e.f. 1983 or from any other subsequent date or promotions from the date of their juniors cannot be granted without assailing their relative seniority for over two decades as such, it cannot be denied that the present O.A. is barred by limitation. In fact, the applicant has also not joined any of the persons claims to be junior to the applicant in the array of parties as respondents. Apart from this, the applicant has also failed to produce any seniority list or any promotion order of any of his junior in this application. The applicant was subsequently declared successful and was posted as Clerk by means of order dated 12.3.2003 and had joined the post on 4.4.2003 whereas the two persons namely Jagbir Singh Verma and Laxmi Narain were working as Clerk much earlier. Therefore, the applicant cannot compare the seniority position between himself and two other persons. The Hon'ble Apex Court in the case of Shiba Shankar Mohapatra Vs. State of Orissa reported in 2011 (1) SCC L&S 229 has been pleased to observe that the seniority which was fixed and remains in existence for a reasonable period, any challenge to the same cannot be entertained.

***"29. Thus, in view of the above, the settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained. In K.R. Mudgal (supra), this Court has laid down, in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation."***

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7. The Hon'ble Apex Court in another case of B.S. Bajwa and another Vs. State of Punjab and others reported in 1998 Supreme Court Cases (L&S) 611 also observed that it is well settled in service that the question of seniority should not be reopened in such situations after a lapse of reasonable period which may result in disturbing the settled position.

***“ It is well settled that in service matters the question of seniority should not be re-opened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This alone was sufficient to decline interference under Article 226 and to reject the writ petition.”***

8. Considering the facts of the case and also the observations of the Hon'ble Apex Court, since the applicant failed to indicate any seniority list as well as order of promotion of any junior to the applicant as well as he was declared unsuccessful in the viva voce which was held in the year 1983, cannot claim for correction of fixation of his pay w.e.f. 1983 as such, we are not inclined to interfere in the present O.A. As such the present O.A. is liable to be dismissed on merit as well as on the ground of limitation. Accordingly it is dismissed. No order as to costs.

*Navneet Kumar*  
 (Navneet Kumar) 01/8/12  
 Member (J)

*S.P. Singh*  
 01.8.12  
 (S.P. Singh)  
 Member (A)

HLS/-